

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
INES C. SANTANA	:	DETERMINATION
for Revision of a Determination or for Refund	:	DTA NO. 819483
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period September 1, 1999	:	
through November 30, 2000.	:	

Petitioner, Ines C. Santana, 2156 Cruger Avenue, Apt LH, Bronx, New York 10462, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1999 through November 30, 2000.

A small claims hearing was held before Arthur S. Bray, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York on May 25, 2004 at 2:45 P.M., which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Michael Joseph).

ISSUE

Whether penalties and interest in excess of the minimum should be canceled.

FINDINGS OF FACT

1. The Division of Taxation ("Division") issued a series of notices of determination, dated November 4, 2002, which assessed sales and use taxes against petitioner, Ines C. Santana, as follows:

Notice Number	Period Ended	Tax	Interest	Penalty	Payments/Credits	Balance Due
L-021712009	11/30/99	\$1,540.39	\$645.65	\$616.07	\$0.00	\$2,802.11
L-021712011	02/29/00	\$3,737.68	\$1,385.12	\$1,121.16	\$0.00	\$6,243.96

Notice Number	Period Ended	Tax	Interest	Penalty	Payments/Credits	Balance Due
L-021712010	05/31/00	\$2,579.73	\$759.74	\$718.52	\$0.00	\$3,732.71
L-021712007	11/30/00	\$3,415.31	\$861.07	\$1,024.53	\$0.00	\$5,300.91

Each of the notices stated that petitioner was a responsible officer or person of CCR Food Center Corp.

2. Petitioner was the president of CCR Food Center Corp. The business employed the services of a manager whose duties included maintaining the business's books.

3. The sales and use tax returns for the periods in issue were prepared by a firm known as Castillo Associates and signed by petitioner as president. In conjunction with the return, the manager prepared a check for petitioner to sign. Thereafter, the check and tax return were mailed to the Division.

4. Unbeknownst to petitioner, the manager was stealing from the business and, as a result, there were insufficient funds to cover the checks. Consequently, when the Division cashed the checks, they were returned for insufficient funds.

5. When the checks first started being returned, petitioner asked the manager why the checks were not honored by the bank. The manager replied with excuses such as he forgot to deposit the money or that the money was deposited late. At the time petitioner signed the checks for the periods in issue, she did not know that the checks would be dishonored.

6. The business has been foreclosed upon and is no longer owned by petitioner.

SUMMARY OF PETITIONER'S POSITION

7. Petitioner acknowledges that she owes the money and would like to establish a monthly payment plan for the amount that is due. Petitioner also requests that the penalty and interest be canceled.

CONCLUSIONS OF LAW

A. Penalties were imposed pursuant to Tax Law § 1145(a)(1)(i) which authorizes the imposition of penalties for failure to pay any tax imposed under Articles 28 and 29 of the Tax Law. Tax Law § 1145(a)(1)(iii) provides that if the failure or delay was due to reasonable cause and not due to willful neglect, penalty and additional interest shall be abated. Reasonable cause includes any cause for delinquency which would appear to a person of ordinary prudence and intelligence as reasonable cause for the delay in filing a sales tax return and paying the tax imposed under Articles 28 and 29 of the Tax Law (20 NYCRR 2392.1[d][5]).

B. Petitioner has established reasonable cause for the waiver of penalty and interest beyond the minimum amount prescribed by law. The record shows that petitioner intended to pay the tax due but was prevented from doing so by the surreptitious actions of her manager. Accordingly, penalty and interest in excess of the minimum amount prescribed by law are waived.

C. The Division of Tax Appeals does not have jurisdiction to establish a payment plan.

D. The petition of Ines C. Santana is granted to the extent of Conclusion of Law “B” and the notices of determination dated November 4, 2002 are to be adjusted accordingly; except as so granted, the petition is otherwise denied and the notices of determination are sustained together with such minimum interest as may be lawfully due.

DATED: Troy, New York
August 5, 2004

/s/ Arthur S. Bray
PRESIDING OFFICER